

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Liliana Manuel	Team: Squad #7	CCRB Case #: 201606819	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 08/06/2016 8:58 PM, Thursday, 08/25/2016	Location of Incident: Ingersoll apartments	Precinct: 88	18 Mo. SOL 2/6/2018	EO SOL 2/6/2018	
Date/Time CV Reported Tue, 08/09/2016 9:47 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Tue, 08/09/2016 9:47 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SSA Marshall Winston	04109	913724	HBK IRT
2. POM Nicholas Albergio	17802	954471	HBK IRT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Kerron Mondesir	31858	955211	HBK IRT
2. POF Cecelia Wilson	15159	956335	HBK IRT
3. POM Cory Levy	19666	958812	HBK IRT

Officer(s)	Allegation	Investigator Recommendation
A.SSA Marshall Winston	Abuse: Sergeant Marshall Winston stopped § 87(2)(b)	
B.SSA Marshall Winston	Abuse: Sergeant Marshall Winston threatened to arrest § 87(2)(b)	
C.SSA Marshall Winston	Abuse: Sergeant Marshall Winston threatened to arrest § 87(2)(b) and § 87(2)(b)	
D.POM Nicholas Albergio	Abuse: Police Officer Nicholas Albergio threatened to arrest § 87(2)(b)	
E.SSA Marshall Winston	Abuse: Sergeant Marshall Winston threatened § 87(2)(b) and § 87(2)(b) with the use of force.	
F.SSA Marshall Winston	Discourtesy: Sergeant Marshall Winston spoke discourteously to § 87(2)(b) and § 87(2)(b)	
G.SSA Marshall Winston	Discourtesy: Sergeant Marshall Winston acted discourteously toward § 87(2)(b)	
H.SSA Marshall Winston	Abuse: Sergeant Marshall Winston searched § 87(2)(b)	

Case Summary

On August 9, 2016, § 87(2)(b) filed this complaint with the CCRB via the online website (Board Review 01). That same day, § 87(2)(b) called the Internal Affairs Bureau (IAB) and filed a duplicate complaint regarding this incident, generating IAB log 2016-28526 (Board Review 02; 03).

On August 6, 2016, at approximately 8:58 p.m., § 87(2)(b) and § 87(2)(b) were in front of 28 Fleet Walk, in Brooklyn, which is part of the Ingersoll Houses NYCHA complex, with their friends, § 87(2)(b) and § 87(2)(b). The men were seated on or standing nearby NYCHA benches, and § 87(2)(b) was seated in a chair he had brought with him. Sergeant Marshall Winston of Housing Borough Brooklyn IRT stopped the men and told them they would be arrested if they did not produce their identification (**Allegations A, B, and C**). PO Nicholas Albergo of Housing Borough Brooklyn IRT also threatened to arrest § 87(2)(b) (**Allegation D**). Sgt. Winston approached the men with his Taser in his hand (**Allegation E**). During the stop, Sgt. Winston allegedly made various discourteous statements to § 87(2)(b) and § 87(2)(b) such as, “Move the fuck out of my way,” “Get off the motherfucking chair,” and, “You live in shit and piss” (**Allegation F**). Sgt Winston allegedly emptied the contents of § 87(2)(b) bottle of water or juice (**Allegation G**). Sgt Winston also searched § 87(2)(b) backpack (**Allegation H**).

§ 87(2)(b) was arrested for public consumption of alcohol (Board Review 04). § 87(2)(b) was issued a summons for disorderly conduct (littering), and both § 87(2)(b) and § 87(2)(b) were issued summonses for disorderly conduct (obstructing pedestrian pathway) (Board Review 05; 06; 07). § 87(2)(b) was not arrested or issued a summons. § 87(2)(b) and § 87(2)(b) witnessed portions of the incident. § 87(2)(b) and § 87(2)(b) recorded videos of the incident, which they provided to the CCRB. The footage taken by § 87(2)(b) does not show any police misconduct (Board Review 43). In the footage taken by § 87(2)(b) and § 87(2)(b) Sgt Winston is seen holding his Taser, and is heard threatening to arrest the males (Board Review 34; 30; 48; 49). The footage taken by § 87(2)(b) shows Sgt Winston making discourteous statements to the males, and shows him later holding § 87(2)(b) backpack. It also shows PO Albergo threatening to arrest § 87(2)(b) and § 87(2)(b) full videos can be found in IAs 95 and 51, respectively. The full version of § 87(2)(b) video can be found in IA #16.

Relevant portions of the footage taken by § 87(2)(b) are embedded below. Clip #1 depicts Sgt Winston holding his Taser and speaking discourteously to § 87(2)(b) and shows PO Albergo threatening to arrest § 87(2)(b). Clip #2 depicts Sgt Winston holding § 87(2)(b) bag. In clip #3, an officer can be heard speaking discourteously to § 87(2)(b).

Video Clip #1



2016-12-01_17-50-50.mp4

Video Clip #2



2016-12-01_17-52-31.mp4

Video Clip #3



2016-12-01_17-53-33.mp4

Mediation, Civil and Criminal Histories

- § 87(2)(b) refused to participate in the mediation process.
- As of October 4, 2016, none of the civilians involved had filed a Notice of Claim with the City of New York with regard to this incident (Board Review 08).
- § 87(2)(b) [REDACTED]
- § 87(2)(b) [REDACTED]
- § 87(2)(b) [REDACTED]
- § 87(2)(b) [REDACTED] and § 87(2)(b) have had no prior criminal convictions in the last ten years (Board Review 10; 11).

- § 87(2)(b) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- § 87(2)(b) [REDACTED]
[REDACTED]

Civilian and Officer CCRB Histories

- § 87(2)(b) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- This was § 87(2)(b) first CCRB complaint. § 87(2)(b) [REDACTED]
[REDACTED]
- This is the first CCRB complaint in which § 87(2)(b) and § 87(2)(b) were listed as either complainants or victims (Board Review 17; 18; 19).
- Sgt. Winston has been a member of the service for 26 years. He has had 18 prior CCRB cases involving 38 allegations, none of which were substantiated. § 87(2)(b), § 87(2)(g) [REDACTED]
[REDACTED].
- PO Albergo has been a member of the service for three years and has one prior allegation against him for reportedly using discourteous language. That case was closed as unsubstantiated § 87(2)(i) [REDACTED]
[REDACTED]

Potential Issues

§ 87(2)(b) and § 87(2)(b) provided unsworn phone statements to the CCRB, during which they confirmed that they witnessed the incident, but did not allege that they were victims of any police misconduct (Board Review 38; 42). § 87(2)(b) and § 87(2)(b)'s statements were generally consistent with the other males' statements, and confirmed what was already apparent in the video footage. § 87(2)(b) and § 87(2)(b) therefore were not interviewed by the CCRB.

§ 87(2)(b) provided an unsworn phone statement to the CCRB on August 17, 2016, and requested a call back to schedule an interview (Board Review 37). On August 25, 2016, he scheduled a CCRB interview to take place on August 31, 2016. § 87(2)(b) did not appear to his CCRB interview and did not respond to subsequent contact attempts. Due to his uncooperativeness, § 87(2)(b) did not provide a sworn, verified statement to the CCRB.

Findings and Recommendations

Allegations Not Pleaded

- Stop – Sgt Winston stated that he stopped § 87(2)(b) and § 87(2)(b) because he observed them holding clear cups containing what he believed to be alcohol, and observed a bottle of Hennessy on the ground next to them. He believed the other males were blocking the pedestrian pathway. PO Wilson added that the males were also stopped because one male threw a plastic bag over a fence. § 87(2)(b) was arrested for public consumption of alcohol, and § 87(2)(b) was summonsed for discarding a plastic bag containing plastic cups onto a public sidewalk. Both § 87(2)(b) and § 87(2)(b) were issued summonses for obstructing the pedestrian pathway. Because the males were ultimately arrested or issued

summonses for the offenses for which they were stopped, stop allegations have not been pleaded on behalf of § 87(2)(b) or § 87(2)(b)

- Stop – § 87(2)(b) and § 87(2)(b) alleged that Sgt Winston stopped § 87(2)(b) and § 87(2)(b) stated that § 87(2)(b) may have been stopped. § 87(2)(b) stated he watched the incident from across the street, but denied being involved. A stop allegation has therefore not been pleaded on behalf of § 87(2)(b)

Allegation A – Abuse of Authority: Sergeant Marshall Winston stopped § 87(2)(b)

In addition to their original complaints, § 87(2)(b) provided a phone statement to the CCRB, and both he and § 87(2)(b) provided sworn statements to the CCRB (Board Review 31; 32; 33). § 87(2)(b) provided an unsworn phone statement, and § 87(2)(b) and § 87(2)(b) provided phone statements and sworn statements to the CCRB (Board Review 35; 36; 39; 41). All of the males' statements were generally consistent.

§ 87(2)(b) stated that he was sitting outside on a bench that was part of the Ingersoll Houses. The other males were also seated on or standing around the benches, chatting. Upon noticing the officers, some of the males stood up by the benches, but none blocked the pedestrian pathway. All of the males denied drinking alcohol or engaging in any illegal activity. There were no bottles of alcohol in the vicinity, but § 87(2)(b) stated there were cups of juice on the ground that did not belong to the men. Sgt Winston approached the males and requested all of their identification cards (ID's). The males initially refused to provide their ID's. Sgt Winston stated the men would be arrested if they did not comply, and stated, "ID or cuffs [sic]." § 87(2)(b) stated he did not have his ID, and so Sgt Winston told him to leave. All of the other males produced their IDs. Sgt Winston later accused the males of drinking alcohol, and § 87(2)(b) was arrested for public consumption of alcohol.

§ 87(2)(b) stated that he looked out of his window and saw officers speaking to males who were sitting on a bench. § 87(2)(b) believed some of the males were issued summonses for blocking the entrance of the building, but § 87(2)(b) denied that the males had done so.

Sgt Winston was interviewed at the CCRB and stated that he observed § 87(2)(b) and § 87(2)(b) sitting on a bench holding clear cups containing what he believed to be alcohol, and observed additional cups and a bottle of Hennessy on the ground next to them (Board Review 46). Sgt Winston believed there were other males standing by the benches, but he did not know who they were and could not recall if they appeared to be drinking alcohol. Sgt Winston intended to issue the men summonses for drinking alcohol, and requested all of the males' ID's because he was not sure if the other males were drinking alcohol, and he believed they were "hanging out in front of the building," blocking pedestrian traffic. There was not much room between the benches and the building, and therefore if one was not sitting on the benches, they were "basically" obstructing the traffic flow into the building. Sgt Winston believed § 87(2)(b) did not have his ID, but did not recall there being any other males who did not have ID.

A brief portion of footage taken by § 87(2)(b) was presented to Sgt Winston starting at the 10:24 mark. The footage showed that the males and officers were positioned by benches in front of scaffolding. An individual was walking behind the scaffolding on a walkway which led to the building's entrance. Sgt Winston stated that the space behind and in front of the scaffolding, where the males and officers were, were both part of the walkway. He added that the males may have moved around by that point in the video.

PO Wilson was interviewed at the CCRB and stated that she saw males sitting on and standing by a bench, and saw § 87(2)(b) sitting on a chair next to the benches, blocking the pedestrian pathway (Board Review 45). One male dropped what appeared to be a plastic bag over a fence. Because PO Wilson and Sgt Winston were unsure of what was in the bag, and because a firearm had been found at the location two days prior while some of the same males were present, Sgt Winston and PO Wilson decided to request additional officers and approach the males. PO Wilson stated that all of the males ID's were requested because they were sitting in front of the building, one was holding a cup which she believed to contain alcohol, one put a cup on

the ground, and because there were other cups with liquid near some of the males. However, PO Wilson was unable to differentiate between the males, or the specific reason for the stop of § 87(2)(b). She stated that the walkway and entrance to the building were right next to the benches.

PO Albergo was interviewed at the CCRB and stated that by the time he responded to the location, the males had already been stopped (Board Review 47). Although he did not see the actions that resulted in the stop, he observed § 87(2)(b) drinking what he believed to be alcohol from a cup, and observed a bottle of Hennessey next to § 87(2)(b). He was unaware of the reason for which the other men were stopped. Though some of the males were standing, none were blocking the pedestrian pathway by the time PO Albergo arrived. PO Levy was interviewed at the CCRB (Board Review 44). He did not know why the males were stopped and could not recall if they were doing anything for which they could have been arrested or summonsed.

§ 87(2)(b) began filming the incident when he first observed Sgt Winston, prior to when Sgt Winston approached him. He filmed for the duration of the incident. Footage provided by § 87(2)(b) and § 87(2)(b) show the males sitting and standing around the benches in a courtyard. The footage shows Sgt Winston repeatedly asking for the males' ID's. Throughout the footage, multiple individuals are seen walking, unobstructed, past the males and officers toward the entrance of the building (Board Review 48).

§ 87(2)(b) was the only individual to be arrested or issued a summons for possessing or consuming alcohol (Board Review 04). § 87(2)(b) was issued a summons for discarding a plastic bag containing plastic cups onto the sidewalk (Board Review 05). § 87(2)(b) and § 87(2)(b) were issued summonses for obstructing pedestrian pathway (disorderly conduct) (Board Review 06; 07).

Officers may stop an individual when they have reasonable suspicion that the person has committed, is committing, or is about to commit a crime. *People v. Debour*, 40 N.Y.2d 210 (1976) (Board Review 21). Absent other factors and particularized reasonable suspicion of criminality, simple association with others suspected of a crime will not justify a stop. *In re Nelson S.*, 196 A.D.2d 422, 600 (1st Dept. 1993) (Board Review 22).

Sgt Winston stated that he stopped the males because he observed § 87(2)(b) and § 87(2)(b) drinking what he believed to be alcohol and observed cups on the ground, and because some males, who he could not identify, were blocking the pedestrian pathway. PO Wilson also saw cups on the ground, and saw a male, identified as § 87(2)(b) drop a plastic bag. Though PO Albergo denied observing anyone other than § 87(2)(b) doing anything for which they could have been arrested or summonsed § 87(2)(g).

Although the males denied drinking alcohol or blocking the pathway, it is undisputed that two of the males were summonsed for blocking the pathway, one was summonsed for discarding a bag filled with cups, and one was arrested for consuming alcohol, thus drawing into question the veracity of their statements regarding this allegation. The officers were unable to specify who, other than those who were arrested or issued summonses, had cups next to them or were blocking the pedestrian pathway.

§ 87(2)(b), § 87(2)(g)

Allegation B: Abuse of Authority – Sergeant Marshall Winston threatened to arrest § 87(2)(b)

Allegation C: Abuse of Authority – Sergeant Marshall Winston threatened to arrest § 87(2)(b)

§ 87(2)(b) and § 87(2)(b)

Allegation D: Abuse of Authority – Police Officer Nicholas Albergo threatened to arrest § 87(2)(b)

§ 87(2)(b) and § 87(2)(b) statements were generally consistent. They stated that Sgt Winston told the males that they would be arrested if they did not provide their

IDs, and stated “ID or cuffs [sic].” § 87(2)(b) asked if he was under arrest, and Sgt Winston replied, “Do you want to be under arrest?” All of the males provided their IDs, with the exception of § 87(2)(b) who did not have his. The civilians did not allege that PO Albergo threatened to arrest them, however, footage taken by § 87(2)(b) shows PO Albergo stating, “If you don’t give him ID you’re going to have to come with us.” It appears he is stating this to § 87(2)(b).

Sgt Winston stated that his initial intent upon approaching the men was to issue them summonses for drinking alcohol. He did not recall telling the males that they would be arrested if they did not provide their IDs, but explained that if individuals did not have their IDs, officers could not issue them summonses, and the individuals would therefore have to be taken to the stationhouse.

PO Albergo observed § 87(2)(b) drinking from a cup that smelled of liquor, and observed a bottle of Hennessy next to § 87(2)(b). § 87(2)(b) stated he did not have his ID, and so PO Albergo told him he would have to be taken back to the stationhouse for identification purposes. PO Albergo initially denied stating this to any other individuals, but later identified himself to be the officer in the footage stating, “If you don’t give him ID you’re going to have to come with us.” PO Albergo did not independently recall making the statement or speaking with § 87(2)(b).

While issuing an individual a summons, an officer must establish the identity of that individual. If there is doubt concerning identity, an officer should remove the individual to the command for investigation. NYPD Patrol Guide, Procedure 209-09 (Board Review 25).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation E: Abuse of Authority - Sergeant Marshall Winston threatened § 87(2)(b)

§ 87(2)(b) and § 87(2)(b) with the use of force.

§ 87(2)(b) and § 87(2)(b) stated that Sgt Winston approached the males holding his Taser. § 87(2)(b) and § 87(2)(b) stated that Sgt Winston was holding his Taser before making any statements to the males, and § 87(2)(b) stated he held the Taser before requesting their ID’s. The males described Sgt Winston as aggressive, and stated he came close to the males’ faces and addressed them in a provoking manner.

§ 87(2)(b) footage does not show Sgt Winston’s hands clearly until 56 seconds into the video, at which point a Taser is seen in his left hand. § 87(2)(b) comments, “He’s got his Taser out.” Sgt Winston responds, “Damn right I do,” and walks toward § 87(2)(b) coming very close to the camera. After Sgt Winston addressed § 87(2)(b) raised his voice and continued to do so throughout the incident. § 87(2)(b) later moves the camera toward officers’ shields to read their names and badge numbers, but he does not appear to approach the officers at any other point in the video, which is twenty-two minutes long. § 87(2)(b) and § 87(2)(b) are seated for most of the video, and no

civilians appear to approach the officers. Two minutes and 34 seconds into the video, the Taser is again seen in Sgt Winston's hand. The footage pictures approximately seven officers at the location.

Sgt Winston believed that he approached the males with approximately seven other officers, at which point § 87(2)(b) "jumped up," standing approximately three feet from Sgt Winston. Sgt Winston believed the men likely would have physically fought with the officers, as the men were hostile and aggressive by coming close to the officers, though they did not make contact with the officers. Sgt Winston did not recall holding his Taser, even after reviewing the footage, but stated he was not going to "wait for someone to start fighting [with the officers]" or "have a disadvantage."

PO Wilson and PO Albergo stated that the males yelled and were verbally aggressive, expressing that they did not want to cooperate and had not done anything wrong. PO Wilson stated however, that the males' behavior did not escalate or become egregious, and both she and PO Albergo denied fearing for their safety at any point. They did not recall Sgt Winston holding his Taser, even after reviewing the video footage. PO Wilson did not know why Sgt Winston held his Taser, and PO Albergo stated that, in his opinion, nothing occurred that would have justified the use of a Taser. PO Levy described the males as aggravated and hostile, but could not recall if he observed anything that he discerned would have provided a reason for an officer to have his Taser out.

Conducted Electrical Weapons (CEW) may be used to subdue individuals who are actively physically resisting, exhibiting active aggression, which is defined as a threat or overt act of an assault, or to prevent an individual from injuring themselves or another individual. NYPD Patrol Guide, Procedure 221-08 (Board Review 26). An officer may make a threat of force, if not egregious, only when it performs a legitimate police function, particularly if it is used in lieu of further escalation of violence. NYPD v. Briscoe, OATH Index No. 1328/00 (Board Review 27).

Sgt Winston's main justification for brandishing the Taser was his belief that the men could potentially physically fight the officers, as they were hostile and aggressively approached the officers.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) and § 87(2)(b) alleged that Sgt Winston told § 87(2)(b) “Get the fuck out of my way.” § 87(2)(b) stated that Sgt Winston walked toward him and bumped into him while saying this, and when § 87(2)(b) asked why he did so, Sgt Winston replied, “What the fuck are you going to do about it?” § 87(2)(b) and § 87(2)(b) alleged that Sgt Winston made statements to all of the males such as, “Fuck y’all,” “I can do whatever the fuck I want,” “What the fuck are you going to do about it?” “Call whoever the fuck you want,” and, “I don’t give a fuck what you’re doing.” § 87(2)(b) and § 87(2)(b) alleged that Sgt Winston told the males that they lived in “shit and piss,” and § 87(2)(b) added Sgt Winston stated, “...so I’m going to treat you like you’re shit and piss.” § 87(2)(b) also stated that when he told Sgt Winston he did not have his ID, Sgt Winston replied, “Get the fuck out of here.” § 87(2)(b) stated that Sgt Winston told § 87(2)(b) to get up from his chair, and when § 87(2)(b) asked why, Sgt Winston replied, “Get the fuck up.” § 87(2)(b) did not allege that Sgt Winston used and profanity.

Upon reviewing portions of the video footage taken by § 87(2)(b) which show Sgt Winston telling § 87(2)(b) “Move the fuck out of my way,” Sgt Winston acknowledged making the statement and again said § 87(2)(b) did not move out of his way. The footage also showed Sgt Winston telling § 87(2)(b) to get off of a chair, and an officer is then heard stating, “Get off the motherfucking chair.” Sgt Winston believed that he was the officer heard making the aforementioned statement, but still could not recall the circumstances surrounding the chair.

§ 87(2)(g), it is undisputed that Sgt Winston told § 87(2)(b) “Move the fuck out of my way,” and told § 87(2)(b) “Get off the motherfucking chair.” § 87(2)(b) and § 87(2)(b) also alleged that Sgt Winston told the males, “You live in shit and piss,” and Sgt Winston acknowledged stating, “It smells like shit and piss.” § 87(2)(b), § 87(2)(g)

1. [REDACTED]
 2. [REDACTED]
 3. [REDACTED]
 4. [REDACTED]
 5. [REDACTED]
 6. [REDACTED]
 7. [REDACTED]
 8. [REDACTED]
 9. [REDACTED]
 10. [REDACTED]
 11. [REDACTED]
 12. [REDACTED]
 13. [REDACTED]
 14. [REDACTED]
 15. [REDACTED]

§ 87(2)(g)

Allegation G – Discourtesy: Sergeant Marshall Winston acted discourteously toward § 87(2)(b)

§ 87(2)(b) and § 87(2)(b) explained that some of the men had bottles of soda, water, and juice, some of which were sealed. Sgt Winston emptied the contents of the bottles. § 87(2)(b) claimed that one of the bottles belonged to him, and stated that the bottle did not contain alcohol. § 87(2)(b) denied that any of the bottles belonged to him. None of the other civilians alleged to have witnessed Sgt Winston empty the contents of any bottles.

Sgt Winston stated that he could smell alcohol from the cups. He emptied the contents of the Hennessy bottle and the cups he believed contained liquor, but did not recall emptying the contents of any bottles containing non-alcoholic liquid. PO Wilson and PO Albergo denied seeing any officer empty the contents of any cups or bottles, and PO Levy did not recall seeing an officer do so.

No video footage captured Sgt Winston emptying the contents of any bottles.

§ 87(2)(b), § 87(2)(g)

Allegation H – Abuse of Authority: Sergeant Marshall Winston searched § 87(2)(b)

§ 87(2)(b) and § 87(2)(b) stated that Sgt Winston took § 87(2)(b) knapsack off of the nearby scaffolding. § 87(2)(b) and § 87(2)(b) alleged that Sgt Winston searched the bag. § 87(2)(b) stated the bag contained clothes, a charger, brush, and a du-rag. § 87(2)(b) saw Sgt Winston remove papers, a charger, and a shirt from the bag, and then put them back into the bag. Due to their positioning, § 87(2)(b) and § 87(2)(b) could not see if Sgt Winston put his hands in the bag or took anything out. While Sgt Winston searched the bag, § 87(2)(b) stated that the bag belonged to him, and he and § 87(2)(b) told Sgt Winston he was conducting an illegal search. Sgt Winston then dropped the bag, approached § 87(2)(b) and handcuffed him. No contraband was found in the bag. § 87(2)(b) added that the bag appeared empty, as it made no sound when it hit the ground.

Sgt Winston did not recall searching a knapsack/backpack or any of § 87(2)(b) property, but stated that he saw approximately three plastic bags hanging on scaffolding “right next to” the benches. Sgt Winston did not ask who the bags belonged to, but he searched the contents of the bags, explaining, “No one claimed them so we looked in them,” and explaining that he had found a loaded firearm in a discarded bag two days prior when the same males were present. At the time of Sgt Winston’s interview, the owner of the firearm had not been identified. Sgt Winston could not recall if anything was found in the bags, and stated, “I don’t even know what was in them. I didn’t think anything was in them.” After he searched the bags, people claimed that the bags belonged to them. Upon reviewing the footage, in which he appeared to be holding a knapsack, Sgt Winston confirmed that he appeared to be holding a bag, but he was not sure what type of bag it was and could not recall any additional details.

PO Levy did not recall seeing any officer holding or searching § 87(2)(b) bag, and PO Wilson denied seeing an officer do so, even after reviewing the footage. PO Wilson stated that she was checking peoples' ID's at the time in which Sgt Winston was depicted holding the bag.

PO Albergo stated that he searched § 87(2)(b) bag after handcuffing him, incident to his arrest. Other than the fact that a loaded firearm was recovered a few days prior, there was nothing that led PO Albergo to believe § 87(2)(b) was armed or dangerous. There were no bulges resembling a weapon on § 87(2)(b) person or bag. PO Albergo did not recall seeing any other officer search or hold the bag, even after reviewing the footage.

Footage taken by § 87(2)(b) shows Sgt Winston holding a black, drawstring knapsack. Due to his positioning, it is unclear if his hands are in the bag. PO Albergo is seen standing at a distance from § 87(2)(b) not addressing him. As Sgt Winston holds the bag, § 87(2)(b) states, "... and he's going through my bag...that is § 87(2)(b) bag," and § 87(2)(b) yells, "And that's an illegal search!" Sgt Winston then walks to § 87(2)(b) who is talking on the phone, and handcuffs him.

If circumstances reasonably indicate that a weapon is contained in a bag, an officer may frisk the bag. *People v. Moore*, 32 N.Y.2d 67 (1973) (Board Review 50). In order to perform a search, an officer must have probable cause that the person possesses a weapon. *People v. DeBour*, 40 N.Y.2d 201 (1976) (Board Review 21). Though the reputation of a location may contribute to ones' suspicion that a person is armed or dangerous, reasonable suspicion must be based on some describable conduct of the defendant and objective factors specific to the incident. *People v. Marine*, 142 A.D.2d 368 (1st Dept. 2011) (Board Review 30).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Squad: ____

Investigator:	_____	_____ <u>Liliana Manuel</u> _____	_____
	Signature	Print	Date

Squad Leader:	_____	_____ <u>Diana Townsend</u> _____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date